

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION - TOLEDO**

HALEY ALAFAIR PAYNE, as Personal	)	
Representative and Executrix of the	)	
ESTATE OF PAUL MICHAEL	)	CIVIL ACTION NO. 3:21-cv-1068
EDWARD PAYNE, deceased,	)	
	)	
Plaintiff,	)	JURY TRIAL DEMANDED
	)	
v.	)	
	)	
CSX TRANSPORTATION, INC.,	)	
a corporation,	)	
	)	
Defendant.	)	

**COMPLAINT**

**I. Parties, Jurisdiction, and Venue**

1. The Plaintiff, Haley Alafair Payne, is the surviving widow of Paul Michael Edward Payne. She brings this action in her capacity as the Personal Representative and Executrix of the Estate of Paul Michael Edward Payne, deceased.

2. The Defendant, CSX Transportation, Inc., is a Virginia corporation with its principal place of business in Jacksonville, Florida.

3. The incident which is the subject of this action occurred in Fostoria, Ohio.

4. The Defendant, CSX Transportation, Inc., is a common carrier by railroad engaged in the business of operating a railroad in interstate commerce for hire for the purpose of carrying freight in interstate commerce. The Defendant, CSX Transportation, Inc., conducts a significant portion of its railroad operations in the State of Ohio.

5. Paul Michael Edward Payne, deceased, was an employee of the Defendant, CSX Transportation, Inc., at the time of his death, and was acting within the line and scope of his

employment for the Defendant. Mr. Payne's duties of employment for the Defendant were in furtherance of interstate commerce or directly or closely affected interstate commerce.

6. This action is brought pursuant to the provisions of the Federal Employers' Liability Act (FELA), 45 U.S.C., § 51, *et seq.* This Court has jurisdiction pursuant to 28 U.S.C. § 1331, in that this is an action arising under the laws of the United States.

## **II. Facts**

7. On November 22, 2020, Paul Payne was employed as a conductor for the Defendant, CSX Transportation, Inc.

8. On that date, Mr. Payne and his crew were performing a shoving move on CSX's tracks in Fostoria, Ohio. A shoving move is a train movement where the engine pushes railcars as opposed to pulling them. As part of this shoving move, Mr. Payne positioned himself on the side ladder of the first car of the shove so that he could serve as the eyes of the engineer and give appropriate instructions by radio.

9. As he began the shoving move, Mr. Payne did not know that a tree limb had been allowed to extend onto the railroad right-of-way and into his path.

10. As the train was shoving down the track, the tree limb struck and impaled Mr. Payne. He fell from the railcar.

11. On November 22, 2020, Paul Payne died as a result of the injuries he received when being impaled by the limb and knocked from the railcar. Prior to expiring, Mr. Payne suffered severe physical pain and mental anguish.

12. Mr. Payne is survived by his widow and minor children.

## **III. First Cause of Action (Negligence)**

13. The Plaintiff avers that Mr. Payne's injuries and death were caused, in whole or in

part, by the negligence of the Defendant, CSX Transportation, Inc., acting by and through its agents, servants or employees while acting within the line and scope of their employment.

14. The negligence of the Defendant, CSX Transportation, Inc., includes, but is not limited to, the following specific acts of negligence:

- a. Defendant negligently failed to properly maintain its right-of-way to prevent vegetation from interfering with the operation of its trains and its employees performing their work.
- b. Defendant negligently failed to properly inspect its right-of-way for hazards and for encroaching vegetation.
- c. Defendant negligently failed to warn Mr. Payne of the dangers from encroaching vegetation.
- d. Defendant negligently failed to remove dangerous vegetation encroaching on its right-of-way.
- e. Defendant was otherwise negligent.

#### **IV. Second Cause of Action**

15. The Plaintiff avers that Mr. Payne's injuries and death were caused, in whole or in part, by the negligent failure of the Defendant, CSX Transportation, to use reasonable care to provide him with a reasonably safe place to perform his work and labor.

#### **V. Third Cause of Action**

16. Mr. Payne's injuries and death were caused, in whole or in part, by the violation by the Defendant railroad of a Safety Act passed by Congress. Specifically, the Plaintiff avers that the Defendant violated the provisions of 49 C.F.R. § 213.321, in that the Defendant railroad failed to control vegetation on its property which is on or immediately adjacent to the road bed and

allowed that vegetation to interfere with Mr. Payne as he was performing his normal trackside duties and from visually inspecting moving equipment from his normal duty station.

## **VI. Damages**

17. As a result of the death of her husband, Paul Michael Edward Payne, Haley A. Payne, as Personal Representative and Executrix of the Estate of Paul Michael Edward Payne, seeks to recover the following damages and compensation:

- a. The reasonable monetary value of the expected loss of income, services, guidance, protection, assistance, and care given by Paul Michael Edward Payne to his surviving widow and minor children;
- b. Compensation for the conscious pre-death pain and anguish suffered by Paul Michael Edward Payne; and,
- c. Such other compensation as is allowed by law.

18. Because of the severity of the loss, the Plaintiff seeks to recover a sum in excess of \$5,000,000.00.

## **VII. Jury Demand**

19. The Plaintiff requests a trial by jury.

Respectfully Submitted,

/s/ James H. Wettermark

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